

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Charlotte Division

CHARLOTTE, N. C.

JUL 11 2005

U. S. DISTRICT COURT
W. DIST. OF N. C.

ROBERT LOWINGER, Individually and On
Behalf of All Others Similarly Situated,

Plaintiff,

v.

EUGENE B. JOHNSON, DANIEL G.
BERGSTEIN, KELSO INVESTMENT
ASSOCIATES V, L.P., KELSO EQUITY
PARTNERS V, L.P., FRANK K. BYNUM,
JR., GEORGE E. MATELICH, KELSO &
COMPANY and FAIRPOINT
COMMUNICATIONS, INC.,

Defendants.

Civil Action No.:

3:05CV316-H

Superior Court Division for the
General Court of Justice of Mecklenburg
Case No. 05-CVS-10328

NOTICE OF REMOVAL

To: United States District Court
for the Western District of North Carolina, Charlotte Division

Superior Court Division of the General Court of Justice for Mecklenburg County, North
Carolina,

John T. O'Neal
Donaldson & Black, P.A.
208 West Wendover Avenue
Greensboro, NC 27401
(336) 273-3812

Jeffrey S. Abraham
Abraham, Fruchter & Twersky LLP
One Penn Plaza, Suite 2805
New York, NY 10119

PLEASE TAKE NOTICE that Defendant FairPoint Communications, Inc. ("FairPoint")
hereby removes this civil action from the Superior Court Division of the General Court of Justice

for Mecklenburg County, North Carolina pursuant to 28 U.S.C. §§ 1441 and 1446. The grounds for this removal are as follows:

1. A civil action has been commenced and is now pending in the Superior Court Division of the General Court of Justice for Mecklenburg County, North Carolina wherein Robert Lowinger, individually is the Plaintiff and Eugene B. Johnson, Daniel G. Bergstein, Kelso Investment Associates V, L.P., Kelso Equity Partners V, L.P., Frank K. Bynum, Jr., George E. Matelich, Kelso & Company and FairPoint Communications, Inc. are the Defendants. That action has been designated case number 05-CVS-10328 by the Clerk of the aforementioned court. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, motions and orders thus far served upon or by Defendants in Case No. 05-CVS-10328 are attached hereto as Attachment A.

2. Process in Case No. 05-CVS-10328 was served on Defendant FairPoint Communications, Inc. ("FairPoint") on June 13, 2005. Pursuant to 28 U.S.C. § 1446(b) this Notice of Removal is filed within 30 days of service of the Complaint upon Fairpoint, and thus, is timely.

3. Moore & Van Allen, PLLC appears on behalf of Defendants Eugene B. Johnson, Daniel G. Bergstein, Kelso Investment Associates V, L.P., Kelso Equity Partners V, L.P., Frank K. Bynum, Jr., George E. Matelich and Kelso & Company (the "Remaining Defendants"), each of whom consent to this Removal. The Remaining Defendants reserve all of their defenses, including specifically defenses based upon lack of personal jurisdiction, venue, and improper service.

4. All of Plaintiff's asserted claims arise under and pursuant to Sections 11, 12(a)(2) and 15 of the Securities Act of 1933 [15 U.S.C. § 77k, 771(a)(2) and 77o.]

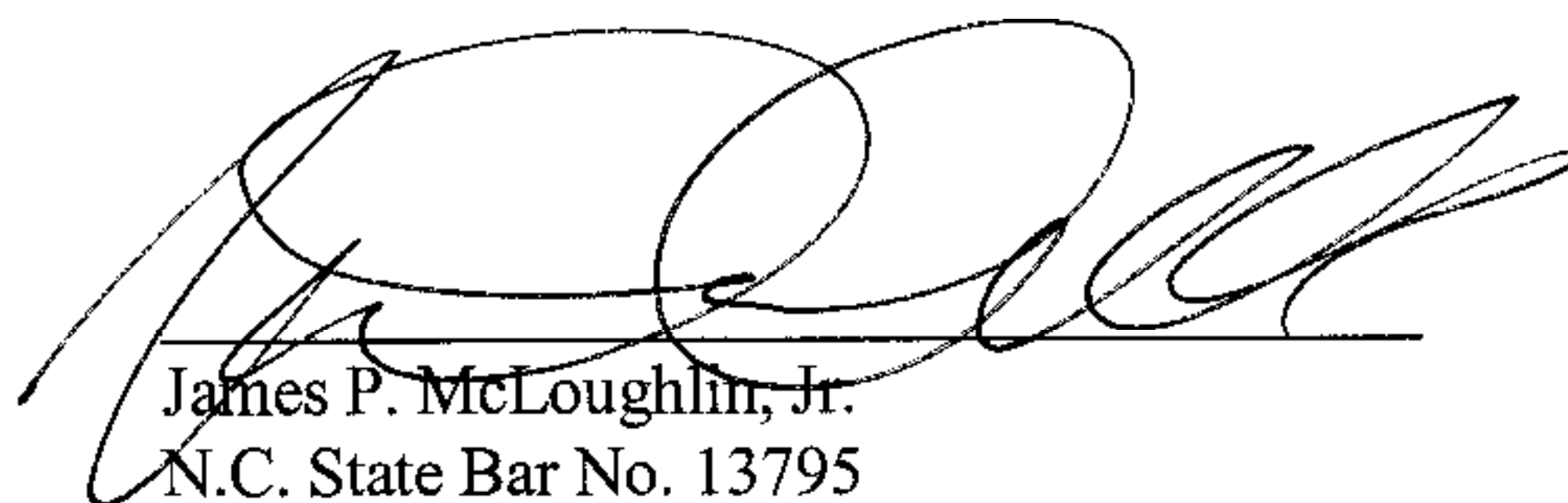
5. Plaintiff has alleged no state law claims in this action.

6. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331, because all of Plaintiff's allegations arise under and pursuant to federal law. Accordingly, the above-referenced civil action is removable to this Court pursuant to 28 U.S.C. §§ 1441(b) and 1446(b).

7. In support of this Removal, Defendant FairPoint relies, in part, upon the reasoning articulated by the district courts in *Adkow v. TXU Corp.*, 2003 U.S. Dist. LEXIS 7900 (N.D. Tex. May 8, 2003); *Brody v. Home Store, Inc.*, 240 F. Supp. 2d 1122 (C.D. Cal. 2003); *In Re: King Pharms. Inc.*, 2004 U.S. Dist. LEXIS 20222 (E.D. Tenn. 2004); *Contra Miller v. Waste Mgmt., Inc. (In Re. Waste Mgmt., Inc. Sec. Litig.)*, 194 F. Supp. 2d 590 (S.D. Tex. 2002); *Nauheim v. Interpublic Group of Companies*, 2003 U.S. Dist. LEXIS 6266 (N.D. Ill. Apr. 15, 2003); *Hawaii Structural Ironworkers Pension Trust Fund v. Calpine Corp.*, 2003 U.S. Dist. LEXIS 15832 (S.D. Ca. Aug. 26, 2003).

WHEREFORE, for the reasons stated above, Case No. 05-CVS-10328 pending in the Superior Court Division of the General Court of Justice for Mecklenburg County, North Carolina, should be removed to this Court.

The 11 day of July, 2005.



James P. McLoughlin, Jr.

N.C. State Bar No. 13795

Valecia M. McDowell

N.C. State Bar No. 25341

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George E. Matelich

Kelso & Company and

FairPoint Communications, Inc.

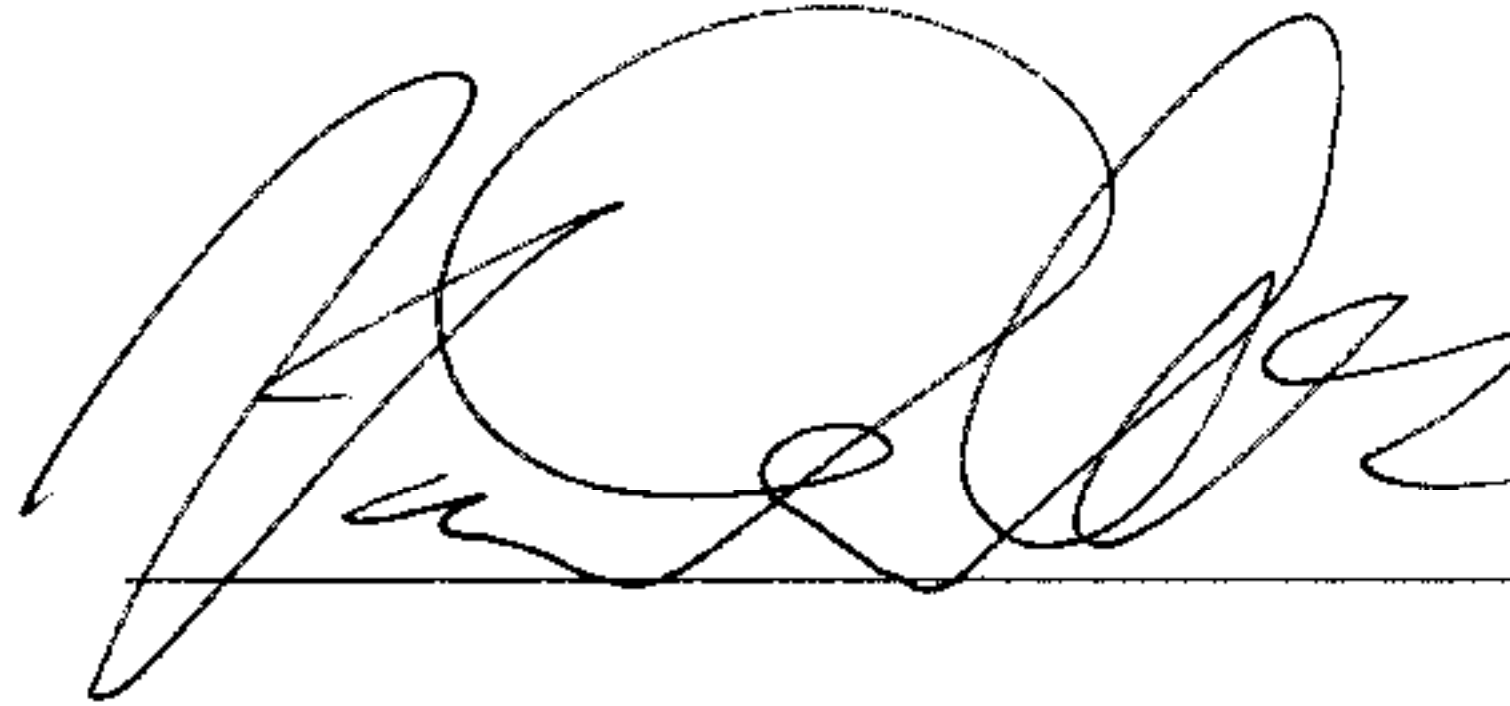
CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing **NOTICE OF REMOVAL** upon all parties to this action by depositing copies in the United States mail, first-class postage prepaid, addressed to counsel of record as follows:

John T. O'Neal
Donaldson & Black, P.A.
208 West Wendover Avenue
Greensboro, NC 27401

Jeffrey S. Abraham
Abraham, Fruchter & Twersky LLP
One Penn Plaza, Suite 2805
New York, NY 10119

This the 11th day of July, 2005.

A handwritten signature in black ink, appearing to read "Jeffrey S. Abraham", is written over a horizontal line.